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BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

DANIEL ON NEGOTIABLE INSTRUMENTS: FIFTH EDITION. — With considerable vigor and some severity the Hon. John W. Daniel answers the criticism of the last edition of his work on Negotiable Instruments which appeared in Volume 16, page 605 of this REVIEW. The greater part of the learned author's letter which was published in 58 Central Law Journal 69, is devoted to an argument in further support of his dissent from "the cases which decide that the drawee paying a forged draft cannot recover back the amount from the party to whom he paid it, whether such party received it before or after acceptance." In his book, § 1361, Mr. Daniel based his dissent on two grounds, first, that if the holder indorses the draft he "warrants its genuineness," and second, that if he does not indorse it, yet "his very assertion of ownership is a warranty of genuineness in itself." We endeavored in our review to show that the cases cited in support of the first ground do not sustain the author, and that the cases cited in support of the second ground were not in point, being cases of a sale of the instrument or a transfer of it in payment of a debt of the transferrer. We think that our conclusion has not been overcome by the author in the argument in his letter, which, in so far as it gives new reasons for his view, seems to be based on the theory that the drawee should recover because the payment was made under a mistake of fact, and also for the further reason that the consideration has failed. The claim that the holder should be "liable on the ground of failure of consideration when he gets thereby the money of payment for it," and the reference to *Aldrich* v. *Jackson*, 5 R. I. 218, only emphasize the learned author's unwillingness to distinguish the case under discussion from such wholly different cases as a sale of a forged instrument, or a payment of an instrument to which the holder has no title, because of the forgery of an indorsement of the real owner.

It is not necessary that the holder of a draft should give a consideration to the drawee, nor does it matter whether the drawee receives or expects to receive a consideration from the drawer. The payee or other holder of a bill and the drawee are remote parties. The learned author himself furnishes us authority on this point. DANIEL, NEGOT. INSTR., 5th ed., § 174 a, and n. 50.[1]

Much more may be said for the theory that the drawee should recover because the payment was made under a mistake of fact than for any other of the reasons assigned by the learned author in his book or in his letter. We believe, however, that the argument for recovery in quasi contract has been so fully met by Professor Ames in his article on "The Doctrine of Price *v.* Neal" in 4 HARV. L. REV. 297, that it would not be profitable for us to give time and space to it here. See also the article by Professor Ames on "Forged Transfers of Stock" in the present number.

As to the claim that a holder who presents for payment an instrument to which the signature of the drawer has been forged, warrants the genuineness of the instrument if he indorses it, we submit that this is not true either as a matter of intention or of law. "Every man in presenting a draft for payment says in substance either expressly or by implication, 'Here is the draft of

[1] In examining the cases cited in this note we discovered a mistake in arrangement. In § 174, n. 8, of the third edition, the author states the case of Hoffman & Co. *v.* Bank of Milwaukee, 12 Wall. 181. In the fourth edition and in the last edition several other cases are interpolated between the citation and the statement of this case, so that the statement now seems to have reference to the case of Arpin *v.* Owens, 140 Mass. 144. See fourth ed., § 174 a, n. 6, fifth ed., § 174 a, n. 50.

A. B. that I wish you to pay.' Such a statement in the ordinary course of business, would not be understood as a warrantee of the genuineness of the draft. . . . The holder has not the means of knowing whether the draft is genuine, and looks to the drawee for confirmation on this point, and his statement that he has such a draft can only mean that he has a draft signed with such a name."[1] In the analogous case of *Leather* v. *Simpson*, L. R. 11 Eq. 398, a bill was sent by a bank to the drawee for acceptance with a memorandum attached which stated that the bank held a bill of lading for cotton. The drawee accepted the bill, and afterwards paid it and received the bill of lading which proved to be forgery. In an action to recover back the money plaintiff claimed that the memorandum attached to the bill was a representation that the bank was the holder of a genuine bill of lading. But the court regarded the memorandum as having only the effect of saying "we have a bill of lading," and that the fair meaning of this may possibly be "we have a document which on the face of it is a bill of lading." Nothing had occurred to excite their suspicions. They believed it to be a bill of lading, and they therefore so called it. But this did not amount to a representation that it was a genuine bill of lading.[2]

But what is the meaning of the writing by the holder of his name on the back of a bill which he presents to the drawee for payment? If a bill is payable to the order of A, or to A or order, A is entitled to sue on it without indorsing it.[3] In Comberbach, 401, Lord Holt said, "Where a bill of exchange is payable to a man's order, that is to himself if he makes no order." In *Smith* v. *M'Clure*, 5 East 476, Lord Ellenborough said that "a bill payable to a man's own order was payable to himself if he did not order it to be paid to any other." In *Sherman* v. *Goble*, 4 Conn. 246, it was held that the legal construction of a note to the order of plaintiff is that it is payable to himself. So the declaration need not allege that he ordered it paid to himself.

In like manner the payee or other holder of an instrument should be entitled to payment without indorsing it. There are few authorities on this point. In *Osborn* v. *Gheen*, 5 Mackey 189, it was held that the payee of a check was not under obligation to indorse it in blank as a voucher for payment when he receives payment thereon. In 26 Albany L. J. 61, is a statement of a case decided by the Common Pleas Court at Cleveland, Ohio, in which it was held that when the payee of the check had indorsed it in blank and delivered it to the holder the drawee bank could not require the holder to indorse the check as a condition to payment. In *Rowley* v. *Nat'l Bk. of Deposit*, 63 Hun 550, a check drawn to order of a payee was deposited by him in a bank, which presented it to the drawee bank for payment, and payment being refused, the drawer sued the drawee bank. The complaint did not state that the payee had indorsed the check, and this was held a fatal defect. This was right because the complaint showed no title in the bank in which the check was deposited, and which presented it for payment. But in the later case of *Eichner* v. *Bowery Bank*, 24 N. Y. App. Div. 63, a complaint was held insufficient when the payee himself presented the check, but no averment was made that it was indorsed by the payee. The court rested its judgment solely on the case of *Rowley* v. *Nat'l Bank of Deposit*, which is clearly distinguishable. But whether *Eichner* v. *Bowery Bank*, was correctly decided or not, it affords no authority for the right of a drawee to require an indorsement by the holder of a bill or check for any other purpose than as a receipt of payment.

Whether upon payment of a bill or note the drawee or maker can insist upon a receipt is a question which engaged the attention of early writers on negoti-

[1] Bernheimer *v.* Marshall & Co., 2 Minn. 78, 84.

[2] See also Goetz *v.* Bank of Kansas City, 119 U. S. 551; First Nat'l Bank *v.* Burkham, 32 Mich. 328; and the analogous case of Sheffield Corporation *v.* Barclay, [1903] 2 K. B. 580.

[3] Frederick *v.* Cotton, 2 Show. 8; —— *v.* Ormston, 10 Mod. 286; Smith *v.* M'Clure, 5 East 476; Myers *v.* Wilkins, 6 U. C. Q. B. 421; Sherman *v.* Goble, 4 Conn. 246; Durgin *v.* Bartol, 64 Me. 473; Huling *v.* Hugg, 1 W. & S. 418.

able instruments. While expressing doubt upon this point, the writers all state that it is usual to give a receipt on the back of the bill. This custom runs far back. We find a passage in MARIUS (2d ed. 1654) 68, which is too long to quote, to the effect that when the holder sent a bill indorsed in blank to an agent to collect, the agent would either write an assignment to himself over the blank signature and then write a receipt for the money over his own signature, or write a receipt over the blank signature of the holder. If the agent sent his man to collect the bill the man might either deliver up the bill without any writing, or might fill up the empty place with an assignment payable to his master, and then receipt underneath for the money received for his master's use, "governing himself therein according as the party that shall pay the bill of exchange shall direct, for either way is good and warrantable, according to the custom of merchants used in England."[1] Marius also says (p. 11) that it is usual on writing the name on the back of the bill to leave some space above the name to make a receipt for the money. In an anonymous pamphlet published in 1769 entitled "Obscurities and Defects of the Mercantile Law Considered in an Essay on Bills of Exchange," various forms of bills are given. With the first of these forms there is also a form of special indorsement by the payee which is followed by a form of receipt of payment signed by the indorsee (pp. 9, 10). On page 57 the author of the pamphlet says, "When a bill of exchange is paid by the acceptor, the *pro tempore* holder gives a full discharge on the back of the bill (as may be seen in the first copy) which ends the whole transaction." In Chitty on Bills (1st ed. 1799) 157, it is said that it is doubtful whether a person paying can insist on a receipt being given, "but it is usual to give a receipt on the back of the bill." Maxwell says, "The receipt of a bill or note need not, like other receipts, be stamped, it is usually given on the back of the bill." Maxwell's Pocket Dictionary of the Law of Bills of Exchange (Amer. ed. 1808) 171. In Rolle's Pocket Companion to the Law of Bills of Exchange published in 1815, the author says on page 76, "In all cases on payment of a bill or note, a receipt should be written on the back of it, and this receipt should state by whom the payment has been made." That the custom was the same in Scotland appears from Glen on Bills of Exchange 163, 164; Muir on Bills of Exchange 39. Swift says, in his Treatise on Bills of Exchange and Promissory Notes (1810) 323, that "when a party pays a bill he is entitled to a receipt, and the usual practice is to give a receipt on the back of the bill." In Story on Promissory Notes, the first edition of which was published in 1845, the author says (§ 452), "In cases of Bills of Exchange it is usual to give a receipt upon the back of the bill." Whether this was still the custom in this country at that time, or whether Story simply took the statement from Chitty, whom he cites as authority, we have no means of knowing. Edwards on Bills and Notes (1st ed. 1857) 577, also states that it is usual to give a receipt on the back of bills. That it was usual to write a receipt on the back of a bill of exchange is also shown by the cases which discuss the effect of the receipt as evidence to show by which party the bill was paid.[2] The English Stamp Acts bear witness to the same custom. While they impose a stamp duty upon receipts, they exempt "receipts written upon a bill of exchange or promissory note duly stamped."[3]

Upon all this evidence is it not reasonable to conclude that the practice of indorsing the name of the holder upon a bill or note when presenting it for payment to the drawee or maker, is founded upon the custom of receipting payment on the back of the instrument, and that such indorsements to-day are only receipts with the receipt form dropped off?

In Grant on Banking (5th ed.) 23, the author says, "A payee, however, writing his name on the back of a cheque as an acknowledgment of payment is

[1] See also Hayes's Negociator's Magazine (3d ed. 1530) 64, 65, to the same effect.

[2] Scholey *v.* Walsby, Peake 24; Pfiel *v.* Vanbatenberg, 2 Campb. 439; Graves *v.* Key, 3 B. & Ad. 313; Egg *v.* Barnett, 3 Esp. 196.

[3] 33 & 34 Vict. c. 97; Schedule Receipt (9); 54 & 55 Vict. c. 39, 1st Schedule Receipt (8); 23 Geo. 3, c. 49, § IV.

not such an indorsement as subjects him to any liability." In *Keene v. Beard*, 8 C. B. N. S. 372, 382, Byles, J., said: "It is true a man's name may and very often is written on the back of a cheque or bill without any idea of rendering himself liable as an indorser. Indeed, one of the best receipts is the placing on the back of the instrument the name of the person who has received payment of it. Such an entry of the name on the instrument is not an indorsement. So a man frequently puts his name on the back of a bank note. In all these cases the act of writing may or may not be an indorsement, according to circumstances." The courts of Massachusetts and Maine have spoken in substantially the same manner, and have treated an indorsement by the holder upon receiving payment from the drawee as a mere receipt or voucher.[1] The learned author, in his letter, says that the holder in such case has given "a false and ineffective security voucher or receipt as against the party whose name is forged instead of a real one." But it is a receipt or voucher for money paid, and if it was intended by the signer for that purpose only, it can have no other effect as to him, whether, by reason of such payment, the drawer is liable to the drawee or not. The receipt proves payment by the drawee just as much as in the case of a genuine drawing. The trouble is not that the indorsement by the holder does not operate to prove payment by the drawee, but that the proof can do the drawee no good as against a drawer whose signature was forged.

So much for the legal effect of the so called indorsement. But if there be no indorsement, it is said by the learned author that "his (the holder's) very assertion of ownership is a warranty of genuineness in itself." But why? The holder does own the paper he presents. The title is in him although the paper may be worthless. The proposition above quoted belongs in a different place. It pertains to the cases in which the holder sells an instrument to which he has no title because the indorsement of the payee or some other owner has been forged. Here it may well be said that the holder's sale of the instrument is an assertion that he is the owner, which involves a warranty that all previous indorsements necessary to give him a good title are genuine. Such a case is that of *Minneapolis National Bank* v. *Holyoke National Bank*, 182 Mass. 130, which Mr. Daniel in his letter claims supports his theory "by a different process of words." When an indorsement is forged, the maker of a note or acceptor of a bill is still liable to the true owner, and upon payment to the true owner he should be subrogated to the latter's right of action against the holder for the amount received by the use of the true owner's note or bill. It is true the courts permit a recovery directly from the holder, but this is one of those equitable cross cuts, by means of which courts of law often seek to do speedy justice.[2]

The rule of *Price* v. *Neal*, adopted by the Courts of England and the United States, enacted by the Codes of Germany, France, Italy, Switzerland, Hungary, Russia, and Belgium, and approved by such judges as Mansfield, Story, and Cooley, surely cannot be said to be a mere arbitrary rule of convenience, unsupported by ethical considerations. Must we not rather say with Professor Ames that this widely recognized rule is founded on "that far-reaching principle of natural justice, that as between two persons having equal equities, one of whom must suffer, the legal title shall prevail"?[3] As the Supreme Court of Maine said in *Neal* v. *Coburn*, 92 Me. 139, 149, "Lord Mansfield compared the equities."[4] The opposition of some text writers to the rule seems to us to arise from the fact that many courts seized hold of one of the lesser reasons given by Lord Mansfield for his judgment in *Price* v. *Neal*, and from it worked out a

[1] Dedham Nat. Bank *v.* Everett Nat. Bank, 177 Mass. 392; Minneapolis Nat. Bank *v.* Holyoke Nat. Bank, 182 Mass. 130; Neal *v.* Coburn, 92 Me. 139.

[2] See 4 HARV. L. REV. 307. See also the article on "Forged Transfers of Stock," *supra*.

[3] 4 HARV. L. REV. 299.

[4] See also the remarks of Cooley, J., in First Nat'l Bank *v.* Burkham, 32 Mich. 328, 331, and of Malins, V. C., in Leather *v.* Simpson, L. R. 11 Eq. 398, 407.

theory of estoppel against the drawee to dispute the signature of the drawer. Hence the failure of the courts of this country to apply the principle of *Price* v. *Neal* to a genuine draft which had been altered after the drawing and before the acceptance or payment. On the Continent of Europe such cases are treated as within the same rule as cases of forgery of the drawer's signature. When courts base their judgment upon estoppel, it is not surprising to find text writers drawing the conclusion, that no holder should be allowed to retain the money paid by the drawee, unless the bill had been accepted before the holder bought it.

The learned author is particularly severe in his strictures upon our suggestion that in § 726 the author gave a wrong reason for the judgment in *Carruthers* v. *West*. We must leave it to the reader to judge whether the paragraph referring to this case, taken as a whole, does not convey the impression, that the author regarded the case as holding, that notice of an agreement not to negotiate an accommodation bill after maturity was necessary in order to affect the purchaser after maturity with this equity of the accommodating party. The Court giving no reason for its judgment, we suggested that the reason was to be found in the remarks of Wightman, J., during the argument. The author answers that the argument of one of the counsel may afford the reason. We submit, that it is not usual to find reasons for a judgment in the argument of counsel, when an adequate reason is to be found in the remarks of one of the court, even though they are made only during the argument. We are not alone in our view. Chalmers refers to the remarks of Wightman, J., for the *ratio decidendi* of the case. Chalmers, Bills of Exchange, 5th ed., 117, n. 8.

The learned author says in his letter that to point out in the text the changes made by the Negotiable Instruments Law and to cite the cases "would have equalled a new book." As less than thirty-five cases had been decided up to the date of the preface of the new edition, this statement seems somewhat exaggerated. See 2 Mich. L. Rev. 284, for a collection of all cases down to January, 1904.

Typographical and Structural Errors. Under this heading the learned author collects some specific instances of carelessness pointed out by us, and speaks of them as constituting the "full hive of the insectile swarm let loose by the critic." In another part of his letter, however, the author complains in regard to the charge of unsatisfactory treatment of the subject of fictitious payee, that "specifications are few." Behold the dilemma prepared for the Critic! He must omit specifications, or giving them, be accused of insectile criticism.

But the errors mentioned were only a part of those encountered, and this was expressly stated. The learned author charges us with inconsistency in stating in one place, that we had made a careful examination of his work for the purpose of the review, and in another place, that the errors we found in this edition came to our notice, either when we opened the volumes at random, or when we examined them to find the author's views on some controverted point. The apparent inconsistency is easily explained. The errors referred to in the later statement, as was apparent from the context, were such as the author styles typographical and structural. In our first examination, which included most of the text and many of the notes, we did not pay particular attention to such errors, and it did not occur to us to make memoranda of them. Later, when we read and examined text and notes and cases cited on some controverted points, such errors became more troublesome, and we began to keep a record of them. Afterwards we opened the volumes at random in a number of places, and examined more of the notes and citations for the purpose of ascertaining whether the sort of errors we had discovered were of common occurrence. During all of these examinations, and also at other times since our review was published, we found so many defects that it seems to us reasonable to infer that the same faults characterize the book generally. The learned author asserts that he does not believe there is a larger percentage of mistakes in his work than in other books on the subject.

It is impossible to give the time to make a detailed examination of the whole of the two volumes, but since we have read the learned author's letter, we

have, by way of experiment, examined the new notes of the first chapter, which consists of thirty-six pages. We find sixty-four new cases cited, or seventy-seven cases if we count repetitions of the same case as new citations. Of these cases five are not mentioned in the Table of Cases, so that they are buried in the book without any means of finding them, if a lawyer having come upon them in some other way wishes to know what has been said of them by Mr. Daniel.[1] Seven new cases which are mentioned in the Table of Cases are not credited to one of the sections in which they are cited.[2] Six mistakes are made in crediting cases to sections in which they are not to be found.[3] In three cases the citations are incorrect as to one of the reports given.[4] The citation of one case is correct as to the report but wrong as to the page.[5] Still another error is to be found in § 24, n. 4, where a quotation from the opinion in Guinan's Appeal, 70 Conn. 347, is ascribed to Baldwin, J., instead of to Andrews, C. J., who delivered the only opinion in the case. It thus appears that in the making of seventy-seven new citations, including repetitions, there occur twenty-three omissions or errors, or over twenty-nine per cent; for each failure to mention in the Table of Cases a case cited in a note, and each failure to credit to the section where it is cited a case mentioned in the Table of Cases is an omission, and each reference in the Table of Cases to a section in which the case is not to be found is an error; so also is a reference to a wrong report or to a wrong page. We submit that this is a larger proportion of omissions and errors than is either usual or reasonable.

While not to be counted as errors occurring in the first chapter, it is not improper to say that, in the course of our examination of new cases cited in the first chapter, we found that some of the new cases are mentioned in the Table of Cases as being in sections in subsequent parts of the book where they do not appear.[6]

There are also many mistakes and omissions in respect to old cases cited in the first chapter. The percentage is not so large as in respect to the new cases. Yet, as it amounts to twenty per cent, it seems to us larger than is reasonable. Whether these mistakes occurred in former editions, we have not had time to discover. If so, they should have been corrected in the new edition. There are three hundred and fifty-one citations of old cases, including repetitions. Four of these cases are not mentioned in the Table of Cases.[7] There are thirty-four failures to credit old cases mentioned in the Table of Cases to one or more of the sections in which they are cited.[8] The Table of Cases

[1] These cases with the sections in which they are cited are: New Orleans *v.* Benjamin, § 10 a, n. 44; Milholland *v.* Whalen, § 24 a, n. 21 & 22; Polley *v.* Hicks, § 24 a, n. 17; Yancy *v.* Field, § 24, n. 6, § 25, n. 33; Board of Missions *v.* Mechanics Sav. Bk., § 24, n. 5.

[2] Brown *v.* First National Bank, § 1, n. 2; Provident Trust Co. *v.* Mercer Co., § 1 a, n. 3; Erickson *v.* Inman, § 18, n. 74; Guinan's Appeal, § 24 a, n. 17; Sayre *v.* Weil, § 24 a, n. 20; McMahon *v.* Sav. Bk., § 24 b, n. 28; Meldrum *v.* Henderson, § 20, n. 81.

[3] Sayre *v.* Weil, § 24; McMahon *v.* Newton Sav. Bank, § 24; Smith *v.* Smith, § 24 b; Provident Trust Co. *v.* Mercer, §§ 1, 15, 20.

[4] Jones *v.* Weakley, 8 S. E. 721, § 24, n. 6; Thomas *v.* Lewis, 50 N. E. 809, § 24 a, n. 17; Milholland *v.* Whalen, 43 Am. St. Rep. 45, § 24 a, n. 22.

[5] Zeller *v.* Jordan, 105 Cal. 43, § 24, n. 8, § 26, n. 40.

[6] These cases with the sections to which they are erroneously attributed are as follows: De Hass *v.* Dibert, § 104; Pool *v.* Anderson, § 713 e, § 1092 b; Farmer's Nat. Bk. *v.* Sutton Mfg. Co., § 890.

[7] Delaware Co. *v.* Diebold & Co., § 10 a, n. 40; Bire *v.* Moreau, § 14, n. 54; Gerrish *v.* New Bedford Inst., § 24 b, n. 31; Warren *v.* Durfee, § 25, n. 35.

[8] International Bank *v.* German Bank, § 1 a, n. 3; Cronin *v.* Patrick Co., § 1 a, n. 3; Gibson *v.* Minet, § 4, n. 13; Bullard *v.* Bell, § 10 a, n. 37; Porter *v.* City of Janesville, § 10 a, n. 42; Strawbridge *v.* Robinson, § 13, n. 53; Towne *v.* Rice, § 14, n. 55; Corser *v.* Craig, § 16 a, n. 59; Cowperthwaite *v.* Sheffield, § 16 a, n. 65, § 18, n. 75; First Nat. Bank *v.* Dubuque S. R. R., § 18, n. 74, § 20, n. 82; Shand *v.* Du Buisson, § 20, n. 81; Poydras *v.* Delamere, § 22, n. 91; Camp's Appeal, § 24 a, n. 17; Amis *v.* Witt, § 24 a, n. 19; Stephenson *v.* King, § 24, n. 6, § 24 b, n. 30; Hill *v.* Stevenson, § 24 b, n. 28; Dole *v.* Lincoln, § 24 b, n. 28; Wells *v.* Tucker, § 24 b, n. 28; Dunbar *v.* Dun-

credits seventeen old cases to sections where they are not cited.[1] Nine old cases are cited as in reports where they are not to be found.[2] The citations of eight old cases are wrong as to the page of the report.[3] It may be conceded that an occasional fault of the kind set forth may be overlooked. But here there are too many to be excused. Nor are such errors to be treated as unimportant. For reasons apparent to every lawyer, the usefulness of a law book for working purposes is much impaired by them. There are also many cases cited only by a page in the opinion of the Court. Where it is desirable in this manner to make special reference to a part of the opinion, the initial page of the case should also be given. As to a number of cases, the citation is to a page, which is neither the first page nor in the opinion, but in the statement of facts, for which there is no justification.

Irrelevant and Misleading Cases. Among the new cases cited in the first chapter are several which seem irrelevant to the propositions in support of which they are cited, or so placed in the notes as to be misleading. *Dinley* v. *McCullagh*, 92 Hun 454, § 26, n. 39, is cited under a paragraph which states the proposition that if a check of the donor delivered as a *donatio mortis causa* is transferred by the donee for value, or in discharge of a debt, or has been paid by the bank before notice of the drawer's death, a court would not take it from the donee. The case is not in point. The check was not transferred by the donee, and it had not been paid. The donee claimed, not that there was a *donatio mortis causa*, but a good gift *inter vivos*, but the court held that there was no valid gift.

Bank v. *Brewing Co.*, 50 Oh. St. 151, and *Covert* v. *Rhodes*, 48 Oh. St. 66, are so placed in § 22, n. 91, as to indicate that they are opposed to the text and to earlier cases in the note, whereas they are in accord.

Section 24, n. 7, contains a quotation from the syllabus of *Ammon* v. *Martin*, 59 Ark. 191, that the delivery of a note by the owner on her death-bed to an agent designated by the donee to receive it under circumstances indicating an intention to make a gift either *inter vivos* or *mortis causa* is a sufficient delivery to pass the title to the note. Then the editor adds, "But this principle is held to apply only to savings banks, *Jones* v. *Weakley*, 99 Ala 441." But there was no such holding in *Jones* v. *Weakley*. That case involved no question as to the delivery of a note, either to the donee or an agent, and it does not limit the application of the principle in *Ammon* v. *Martin*. It involved the question of the validity of a gift *causa mortis* by the delivery of a pass-book in a national bank, not to an agent but to the donee himself. It was held that, while delivery of a pass-book in a savings bank to the donee would be a sufficient delivery,

bar, § 24 b, n. 28; Hatch *v.* Atkinson, § 24 b, n. 28; Burney *v.* Ball, § 24 b, n. 30; Darland *v.* Taylor, § 24 b, n. 30; Brabrook *v.* Boston, etc., Bank, § 24 b, n. 31; Clark *v.* Clark, § 24 b, n. 31; Powers *v.* Provident Ins. Co., § 24 b, n. 31; Stone *v.* Bishop, § 24 b, n. 31; Blasdell *v.* Locke, § 24 b, n. 31; Howard *v.* Windham Bank, 24 b, n. 31; Kerrigan *v.* Rantegan, § 24 b, n. 31; Irish *v.* Nutting, § 25, n. 35; Lawson *v.* Lawson, § 25, n. 36.

[1] Cronin *v.* Patrick Co., § 1; Cowperthwaite *v.* Sheffield, § 20; Stephenson *v.* King, § 24 a; Camp's Appeal, § 24; Dole *v.* Lincoln, § 24; McConnell *v.* Murray, § 24; Wells *v.* Tucker, § 24; Amis *v.* Witt, § 24; Dunbar *v.* Dunbar, § 24 a; Burney *v.* Ball, § 24 a; Darlard *v.* Taylor, § 24 a; Powers *v.* Provident Ins. Co., § 24 a; Stone *v.* Bishop, § 24 a; Blasdell *v.* Locke, § 24 a; Howard *v.* Windham Bank, § 24 a; Kerrigan *v.* Rautegan, § 24 a; Irish *v.* Nutting, § 26.

[2] The names of the cases, the reports and the sections where cited are as follows: Duncan *v.* Course, 3 Const. R. (So. Car.) 100, § 9, n. 32; Buckner *v.* Sayre, 17 B. Mon. 754, § 18, n. 74; Missouri Pacific R. R. Co. *v.* Councilmen, 38 Mo. 141, § 22, n. 91; Rice *v.* Dudley, 34 Mo. 392, § 22, n. 91; Duffield *v.* Elwes, 1 Bligh 409, § 24, n. 11; Burke *v.* Bishop, 27 Am. Rep. 567, § 24, n. 16; Millspaugh *v.* Putnam, 11 Abb. Pr. 380, § 24 a, n. 17; Chase *v.* Redding, 7 Gray 418, § 26, n. 45; Hamer *v.* Moore, 6 Ohio St. 239, § 25, n. 35.

[3] Porter *v.* City of Janesville, 3 Fed. 317, § 10 a, n. 42; *Ex parte* South, 3 Swanst. 391, §§ 16 a, n. 67, 23, n. 94; Brill *v.* Tuttle, 81 N. Y. 547, § 16 a, n. 68; Ray *v.* Simmons, 23 Am. Rep. 266, § 24 a, n. 23; Clark *v.* Clark, 108 Mass. 228, § 24 a, n. 27; Burney *v.* Ball, 24 Ga. 565, § 24 b, n. 30; Gardner *v.* Gardner, 22 Wend. 525, § 25, n. 32; Simmons *v.* Savings Society, 31 Ohio St. 530, § 26, n. 40.

such delivery of a pass-book in an ordinary bank would not, because the depositor did not thereby lose control over the deposit, and it was not the best available delivery. In § 24 a, n. 17, seven cases are cited to the proposition that "deposits in bank can likewise be the subject of a gift *inter vivos*." Of these cases three are not relevant. *Crawford* v. *McCarthy*, 159 N. Y. 514, involved only a legacy of money in bank. There is nothing relevant in the case. *Thomas* v. *Lewis*, 89 Va. 1, was a case of a gift *causa mortis*. It was held to be good as to other personal property, but not as to a gift of deposits in a national bank by delivery of a pass-book, and so, if it is relevant at all, it is opposed to the principle in support of which it is cited. *Citizens' Savings Bank* v. *Mitchell*, 18 R. I. 739, involved no gift *inter vivos*, but only a *donatio mortis causa*.

We have also found some of the old cases cited in the first chapter to be irrelevant, but to examine each case in order to ascertain how many there may be would be too great a task, and we have not undertaken it. At the end of § 24 a, n. 17, a case styled "*McConnell* v. *Murray*, 3 Ir. L. J. 668," is cited as contrary to the proposition that to establish a gift *inter vivos* of deposits in a bank, the evidence must be of the clearest and most satisfactory character. The case intended to be cited involved, not a gift *inter vivos*, but a gift *causa mortis*, and it is not contrary as to the question of evidence. As the note stood in previous editions, the case was put after the case of *Tillinghast* v. *Wheaton*, 8 R. I. 536, and other cases, and is opposed to the decisions in those cases. In this edition new matter and new cases have been added to the note, but instead of leaving the case cited as "*McConnell* v. *Murray*" where it was, it was dropped to the end of the note, and thus cited as opposed to a new proposition and a new case to which it is not opposed. The citation of this case is moreover erroneous in several particulars: the name of the plaintiff and the number of the page of the report are wrong, and the report itself is cited in such an unfamiliar manner as to cause difficulty in finding it. There is a publication the full title of which is "The Irish Law Times and Solicitor's Journal," but it is known in reference catalogues and cited as "Irish Law Times" or "Ir. L. T." The case is to be found in the third volume of that journal at page 568 under the name of *McGonnell* v. *Murray*. The report in the "Irish Law Times" is a meagre and unsatisfactory one of only a column, the decision consisting of fourteen lines, while, more than five years before the first edition of Mr. Daniel's book, the case was fully reported in Irish R. 3 Eq. 460, the opinion of the court filling seven pages. If the editors of this edition had verified the citation before changing the order of the note, they would have been obliged to correct the reference and also to leave the case in its old place in the note. This careless manner of interpolating new matter and new cases in the notes can hardly be regarded as a trifling defect.

The learned author gives the impression in his letter that we found but two cases, which the last edition of his book continues to cite as reported in Law Journals long after they have been published in the regular reports. It is true we named only two cases, but we stated that there are many cases cited in this manner.

Another minor defect is the manner in which the late English reports are cited. For instance, in § 139, note 44, a case is cited as in "L. R. App. Cas. 90 (1896)." We called attention to the fact that it should be [1897] A. C. 90. In his letter the author admits the error in the note, but commits another when he says that "to be nicely accurate this citation should have been A. C. (1897) 90." The mode of citation of these reports in the form we have given is prescribed at the head of the Table of Cases in each volume of the reports.

There are counter-criticisms of the learned author to which we might make answer if we wished to be controversial, but our only object is to state what we conceive to be the truth regarding the work put in our hands to review. We did not intend to be unfair or unkind, and we readily acknowledge that some expressions of impatience with certain features of the book might have been omitted. We also regret it, if we gave the impression that we regarded the learned author's book as not entitled to respect. We thought the work had been sometimes over-praised, not that it was without merit. On the contrary,

we believe that the original text, by reason of its attractive style, its comprehensive scope, and its independence, is one of the best of the larger treatises on the subject. But while we cheerfully concede this, we are obliged to differ with the learned author as to his treatment of a number of subjects, and to express the opinion that in the course of several editions, and particularly in the last edition, the original text and notes have been overlaid with matter, often injudiciously selected, and so carelessly arranged that the total result is not satisfactory. The conviction deepens that the time had come for a reconstruction of the work.

We should be sorry to do injustice to any legal writer, but we consider it the duty of a law review to encourage the making of first-class text-books. This end can never be attained by such indiscriminate praise as characterizes many of the reviews in law magazines. Nor can we agree that it is a defense to a criticism of a law book to say that it is up to the average. We think it has been shown that the work on the present edition is not up to the standard of fairly good books. But however this may be, we submit that it is the right and the duty of the profession to judge a book by the standard of the best type of law books, whether the best happen to relate to the particular subject or to other subjects. And not only the text, but the notes, and the judgment shown in the citing and arrangement of cases should be considered in determining the grade of the book. J. D. B.

FOREIGN INVESTMENTS IN TIME OF WAR. — A question on which there is little authority, but which will undoubtedly be of the utmost importance in the future, is the effect of war on international business relations. A very learned and valuable discussion of some phases of this question is contained in a recent article. *Foreign Investments in Time of War*, by Robert Agar Chadwick, 20 L. Quart. Rev. 167 (April, 1904). After dealing very cursorily with the right to confiscate, the writer devotes some attention to a discussion of the effect of war on foreign loans, with particular reference to debentures. The second part of the article, however, which is taken up with a consideration of the legal position of the foreign shareholder of a corporation in time of war, is of more interest to the American reader. On this question he has found but two views expressed. One writer maintains that the rights and liabilities of the shareholders are suspended during the war. 1 LINDLEY ON COMPANIES (6th ed.) 53. Another writer has argued that enemy shareholders drop out and are entitled to the value of their shares on the day war breaks out. BATY, INTERNATIONAL LAW IN SOUTH AFRICA, ch. VI. The chief analogy is to the case of partnership. A partnership is dissolved by the outbreak of hostilities, since the power of mutual control is gone, and since a person should not reap the benefit of his partner's trade in the enemy's country: suspension is impossible since it is impossible for the partners to pick up the threads of the business where they were abandoned. *Griswold* v. *Waddington*, 16 Johns. (N. Y.) 438. Since the control of a shareholder is slight and seldom exercised by foreigners, and since his liability is limited and he can in addition generally sell even during the war, the writer argues that the first of the reasons given for dissolution of partnership is inapplicable. The inconvenience arising from holding the membership dissolved would be greater, he says, than the hypothetical injustice of continuing his liability in the company over which he cannot exercise the small control given him. The other reasons given for dissolution of partnerships do not apply to corporations, since the rights and liabilities of a shareholder can be suspended. The directors can carry on the business in the interim and profits earned during the war may be withheld.

The writer, however, takes one step more. He contends that the rights and liabilities of the shareholder need not be suspended during the war, though his right to sue must be. The law allows interest to be paid on a loan even to the alien government and also rent for the use of foreign land. From this he argues that it is not positively illegal to share in the profits of trade carried on in the enemy's country. The shareholder, if he remains one, must hold the